

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

APPELLANT/APPLICANT: Chris Pressey
PO Box 40173
Bellevue, WA 98015

ZK Short Plat Appeal
LUA-08-003

LOCATION: 3402 NE 7th Street

PUBLIC HEARING: After reviewing the Appellant's written requests for a hearing and examining available information on file, the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the May 27, 2008 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, May 27, 2008, at 9:02 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Appeal file containing the original appeal letter and site information, by reference.	<u>Exhibit No. 2:</u> Land Use file
<u>Exhibit No. 3:</u> Vicinity Map with subject site in yellow	<u>Exhibit No. 4:</u> Short Plat Map
<u>Exhibit No. 5:</u> Aerial Photograph of area	<u>Exhibit No. 6:</u> Map with various properties labeled (referred to as Key Map)
<u>Exhibit No. 7:</u> J. Hill Plat Map	<u>Exhibit No. 8:</u> Chen Plat Map
<u>Exhibit No. 9:</u> RTC Plat Map	<u>Exhibit No. 10:</u> Landscape Plan

Parties Present:

Chris Pressey, Appellant
Jennifer Henning, Development Services
Rocale Timmons, Planner

Jennifer Henning stated that the project site is located in the Highlands portion of the City. It is to the northeast of Renton Technical College. It is approximately three parcels and about .65 acres in total area. The proposal was to subdivide this parcel into 4 lots. A variance was requested to retain the existing home, that variance was denied. The applicant submitted a new drawing showing the existing house removed.

The City next took action on the proposed short plat, recommending approval of the 4-lot short plat subject to the re-orientation of proposed Lot 4 so that the front yard would face south.

There are many projects in this vicinity that are subject to underlying covenants that originated with King County in the 1940's requiring minimum lot sizes of 6,000 square feet and a minimum lot width of 60-feet. The City Council recently rescinded that covenant and instructed staff to ignore it henceforth and for all projects that are currently in the pipeline. Because of this change, Lots 3 and 4 would need to be modified to meet the minimum lot depth of 65-feet and a minimum width of 50-feet.

Chris Pressey stated that his primary concerns relate to the orientation of Lot 4. In this case the staff chose to have the front face the back of the lot in the J-Hill development. Newport Court is south of the subject site and across NE 7th Street, there are nine homes serviced by that street. The access easement that would service these four lots is closest to Newport Court, if Lot 4 is oriented to the south, there would be a lot of automobile lights that would shine directly into the front of the house as cars exited from Newport Court.

Most people are concerned about their privacy, the adjacent house in J-Hill would have the side yard facing Lot 4, which allows for more privacy. The lot immediately to the north would also have more privacy with Lot 4 facing east. Lots 2, 3 and 4 would all face to the east and Lot 1 would face to the South.

With the proposed orientation, the side yards would be 5-feet and the front with the existing trees in that area, they would more than likely be saved. With the south orientation, the trees would most likely have to be removed. The existing fir trees have diameters of 10, 12, and 20-inch diameters.

Jennifer Henning stated that at the pre-application meeting for the ZK short plat in May of 2007, the pre-application indicated that the front yards of Lot 1 would face south toward NE 7th Street, Lots 2, 3 and 4 would face east and as proposed the existing house would not meet setback requirements for the rear and side yards. The staff acknowledged the proposal and indicated that it met code, however, it was preliminary.

In subsequent phone conversations with Mr. Pressey, she stated that the rear yards should abut one another and what she was trying to indicate was that the City setbacks are for a minimum separation between structures and that there is some expectation that a side yard would not necessarily abut a front or rear yard. There would be an expectation of 35 to 45-feet between primary structures.

She further showed the surrounding plats and how they were structured. RTC and Chen plats front on Monroe Avenue and the interior lots are oriented north/south.

There was conversation as to the significance as to the orientation of yards. Is there an overriding reason to have the lots one way versus another? The abutting yard would end up facing the front yard of the proposed lot here. There are different ways of weighing the matter as well as some ability to structure the size of the homes on the adjacent lots to create a better relationship. Staff looked at the established neighborhoods and their layouts. They were trying to continue the established pattern of homes.

Mr. Pressey again stated that they were looking at balance, how the new homes fit into the area, the privacy factors with adjacent properties and the ability to save some very large trees that would enhance the landscaping of the plat.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:42 am.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The appellant, Chris Pressey, filed an appeal of an Administrative Determination conditioning the approval of a 4-lot Short Plan on orienting the front yard of a home toward the south.
2. The appeal was filed in a timely manner.
3. The subject site is located at 3402 NE 7th Street in the City of Renton. The subject site is a 28,661 SF parcel in the R-8 zone. The applicant applied for a four lot short plat and it was approved with conditions altering the appellant's proposed orientation of the home on Proposed Lot 4. The appellant had proposed that the front yard of that home face to the east, its access roadway. Lots would be accessed by a 26-foot wide private access easement from NE 7th Street.
4. The required setbacks in the R-8 zone are as follows: front yard is 15 feet for the primary structure and 20 feet for an attached garage, side yard is 5 feet, side yard along a street (including the access easement) is 15 feet for the primary structure and 20 feet for an attached garage and the rear yard is 20 feet
5. The appeal was filed by the applicant for the short plat. The appeal challenged Conditions 3 and 4 of the staff report. Condition 3 requires the home on Lot 4 to face south while Condition 4 required a realignment of lot lines to accommodate the home's proposed new orientation. The applicant-appellant believes that the home on Proposed Lot 4 should have its front yard oriented to the east facing the location of the access easement. The appellant believes that it would be more appropriate for it to align with its two southerly neighbors and create a more uniform street setback line. It would also avoid having the home's front face the south sidewall of its southerly neighbor. The reason for Condition 4 was to accommodate Condition 3. The appellant also felt more significant trees could be retained with the east orientation.
6. The City addressed the orientation in its staff report:

"Based on orienting the proposed subdivision to blend with the surrounding neighborhood, staff recommends the following conditions regarding lot orientation: The front yard for proposed Lot 1 would face south toward NE 7th Street; the front yard for proposed Lot 2 would face east towards the access easement; the front yard for proposed Lot 3 would face east toward the access easement; and, the front yard for Lot 4 would face south. The rear yard for each of the lots is required to be opposite the front yard. The proposed lots would be able to meet setback requirements, which would be verified at the time of building permit review."

The City, in this case, attempted to have the rear yards, the private but sometimes active open space, of homes facing or abutting one another.

7. The reasoning was then applied in Conditions 3 and 4:

"3. The front yard for proposed Lot 1 shall face south toward NE 7th Street; the front yard for proposed Lot 2 shall face east towards the access easement; the front yard for proposed Lot 3 shall face east toward the access easement; and, the front yard for Lot 4 shall face south.

4. The applicant shall submit a revised short plat plan prior to final plat approval depicting the depth for Lot 4 changed to meet the minimum requirement of 65 feet. The revised short plat plan shall be submitted to the Current Planning project manager for review and approval."

8. Proposed Lot 4 is an interior lot and is surrounded on all sides by six other homes:

There are three lots along its north property line that have their rear (south) yards adjacent to Proposed Lot 4.

There is one lot along Proposed Lot 4's western property line that has its side (eastern) yard abutting Lot 4.

There is one lot east of Proposed Lot 4 that has side (western) yard abutting Lot 4 (although this neighbor's home leaves a very open rear and side yard).

The final lot that shares a common property line with Proposed Lot 4 is another lot in this proposed short plat, Proposed Lot 3. As proposed by staff, Lot 3's side (north) yard would abut Proposed Lot 4's southern property line.

9. As observed, Proposed Lot 4 would be separated from its:

northern neighbors' three homes by 20 foot rear yards;
eastern neighbor's home by a 5-foot side yard;
western neighbor's home by a 5 foot side yard; and
southern neighbor's home by a 5-foot side yard.

CONCLUSIONS:

1. The appellant has the burden of demonstrating that the decision of the City Official was either in error, or was otherwise contrary to law or constitutional provisions, or was arbitrary and capricious (Section 4-8-110(E)(7)(b)). The appellant has demonstrated that the action of the City should be reversed. The appeal is granted.
2. Arbitrary and capricious action has been defined as willful and unreasoning action in disregard of the facts and circumstances. A decision, when exercised honestly and upon due consideration of the facts and circumstances, is not arbitrary or capricious (Northern Pacific Transport Co. v Washington Utilities and Transportation Commission, 69 Wn. 2d 472, 478 (1966)).
3. An action is likewise clearly erroneous when, although there is evidence to support it, the reviewing body, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. (Ancheta v Daly, 77 Wn. 2d 255, 259 (1969)). An appellant body should not necessarily substitute its judgment for the underlying agency with expertise in a matter unless appropriate.
4. The main issue boils down to how homes are oriented to one another, particularly homes constructed on interior lots where a mish mash of yards abut one another. Proposed Lot 4 of the subject short plat has

six (6) abutting neighboring lots. This creates a series of odd juxtapositions of yards and building orientation. As proposed by staff, with a front yard facing south, the home on Proposed Lot 4 would have its front windows, as well, as its front door facing the sidewall of its southern neighbor. Normally, a home's front door and windows faces out over a front yard and then open further out toward the street. It also creates a more consistent building setback line where homes on Proposed Lots 2, 3 and 4 align from the easement. Of course, homes built on interior lots suffer a number of limitations but if they can be provided with a more open perspective it would seem best from a design and aesthetic standpoint. In this case, the home could have a 15 foot front yard and then its access driveway. If the lot to the east redevelops, it is possible that a home with a westerly facing front yard might create a more normal streetscape. The appellant's proposed orientation also protects some significant trees.

5. It appears that no matter which way the home is oriented it results in a tradeoff but, again, that is the limitation or awkwardness in developing interior lots. In this case, it appears that the dimensions of the lots, the location of other homes, a more consistent street setback line and the potential for redevelopment to the east creating a more neighborly east-to-west front yard facing front yard favor the appellant's position.
6. The decision below should not be reversed without a showing that the decision is clearly erroneous or arbitrary and capricious. This appears to be a close case but it appears that the appellant has shown that a better orientation for this home would be the one originally proposed, that is the home's front yard should face to the east. This office has found that the decision below was clearly erroneous and the decision below is reversed. Obviously, a better result would be reached if smaller parcels were consolidated for development allowing the creation of full roadway access and normal juxtaposition of homes to one another. Interior lots will always result in some poor interplay between adjacent properties.

DECISION:

The appeal is granted.

ORDERED THIS 12th day of June 2008

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 12th day of June 2008 to the following:

Mayor Denis Law
Jay Covington, Chief Administrative Officer
Julia Medzegan, Council Liaison
Marty Wine, Assistant CAO
Alex Pietsch, Economic Development
Jennifer Henning, Development Services
Stacy Tucker, Development Services
Renton Reporter

Dave Pargas, Fire
Larry Meckling, Building Official
Gregg Zimmerman, PBPW Administrator
Planning Commission
Transportation Division
Utilities Division
Neil Watts, Development Services
Janet Conklin, Development Services

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., June 26, 2008.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., June 26, 2008.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.